INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement	3
Reasons for Granting the Writ	5
Conclusion	12
Appendix A—Opinion and Judgment Below	13
Appendix B—Court of Appeals Opinions in *Covington Mills, et al.* v. *Mitchell*	21

CITATIONS

CASES:

Bolling v. *Sharpe*, 344 U. S. 873 (1952)	11
Brown v. *Board of Education*, 344 U. S. 1 (1952)	11
Dickinson v. *Petroleum Corp.*, 338 U. S. 507 (1950)	8
Graham & Foster v. *Goodcell*, 282 U. S. 409 (1931)	11
Grandillo v. *Perkins*, 36 F. Supp. 546 (N. D. Ohio 1940)	7
John Hancock Ins. Co. v. *Bartels*, 308 U. S. 180 (1939)	8
Johnson v. *Fleet Corporation*, 280 U. S. 320 (1930)	11
Mitchell v. *Covington Mills* (D. C. Cir., Dec. 1, 1955)	1, 2, 5, 6, 8, 9, 10, 11, 12

PAGE

Perkins v. *Lukens Steel Co.*, 310 U. S. 113 (1940).....6, 7, 8, 9
Shapiro v. *U. S.*, 335 U. S. 1 (1948).....6, 7
Smart v. *Woods*, 184 F. 2d 714 (6th Cir. 1950), cert. den. 340 U. S. 936 (1951).....7
Stainback v. *Mo Hock Ke Lok Po*, 336 U. S. 368 (1949).....12
U. S. v. *Powell*, 330 U. S. 238 (1947).....7
U. S. v. *Ruzicka*, 329 U. S. 287 (1946).....6
U. S. v. *Standard Oil Co.*, 332 U. S. 301 (1947).....7
White v. *Mechanics Securities Corp.*, 269 U. S. 283 (1925).....11

STATUTES:

Walsh-Healey Public Contracts Act:

§1(b), 41 U. S. C. §35(b).....2, 4, 5, 6, 9

Fulbright Amendment:

41 U. S. C. §43a(b).....6
28 U. S. C. §§1254(1) and 2101(e).....2, 11
28 U. S. C. §1391(b).....7

MISCELLANEOUS:

Hearings on S. 2594, 82d Cong., 2d Sess. 2476-78 (1952).....9
2 Fed. Reg. 233 (1937).....9
19 Fed. Reg. 535 (1954).....3, 6, 9, 10
19 Fed. Reg. 1930 (1954).....3
81 Cong. Rec. 3503-4 (1937).....9
98 Cong. Rec. 6531 (1952).....6
Sen. Rep. No. 1599, 82d Cong. 2d Sess. 31 (1952).....9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

NO.

THE ALLENDALE CO., *et al.*,
Petitioners,

vs.

JAMES P. MITCHELL, SECRETARY OF LABOR, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Petitioners pray that a writ of certiorari before judgment issue to the United States Court of Appeals for the District of Columbia Circuit to review the judgment of the United States District Court for the District of Columbia, entered in the above entitled case on February 10, 1956.

Opinions Below

The February 7, 1956 memorandum opinion of the District Court is unreported and is printed in Appendix A hereto, *infra*, page 13. The District Court relied upon and followed the decision of the United States Court of Appeals for the District of Columbia Circuit in *Mitchell* v.

Covington Mills, et al. This decision, dated December 1, 1955, is unreported and is printed in Appendix B hereto, *infra*, page 21. Rehearing *en banc* in that case was denied by the Court of Appeals on January 10, 1956 and such denial is printed in Appendix B, *infra*, page 33. A petition for certiorari from the judgment of the Court of Appeals in the *Covington Mills* case was filed in this Court on February 11, 1956 (No. 682) and is now pending.

Jurisdiction

The judgment of the District Court was entered on February 10, 1956 and is printed in Appendix A hereto, *infra*, p. 18. Petitioners appealed this judgment and the record was docketed in the Court of Appeals on February 24, 1956 (No. 13,187). The jurisdiction of this Court is invoked under 28 U. S. C. §§1254(1) and 2101(e).

Question Presented

Whether the Secretary of Labor exceeded his authority under Section 1(b) of the Walsh-Healey Public Contracts Act in determining a single nation-wide minimum wage as prevailing in the "Broad-Woven Goods, Yarn and Thread Branch" of the woolen and worsted industry.[1]

Statute Involved

The statutory provision involved is Section 1(b) of the Walsh-Healey Public Contracts Act (herein the "Act"), 41 U. S. C. §35(b), which reads as follows:

---

[1] In granting summary judgment the Court below denied other challenges to the Secretary's determination (see Appendix A, *infra*, p. 17). Petitioners consider that the other issues presented below are not appropriate for review on this petition.

"In any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations:

• • • • • •

"(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than *the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;*" (emphasis supplied)

Statement

On January 30, 1954 the Secretary, following administrative proceedings, published a proposed minimum wage determination of $1.20 an hour as the single nation-wide prevailing minimum wage for the above-named branch of the woolen and worsted industry (19 Fed. Reg. 535 (1954)). On April 1, 1954 the Secretary signed his final determination, adopting his prior proposal, to be effective on May 7, 1954 (19 Fed. Reg. 1930 (1954)).

Petitioners, woolen and worsted manufacturers,[2] on April 19, 1954 filed a complaint for injunctive relief and a declaratory judgment and a motion for a stay and preliminary injunction with respect to the Secretary's determination. The burden of Petitioners' complaint was that, when the Secretary established a nation-wide prevailing minimum wage, he wholly disregarded the mandate of Section 1(b) of the Act that prevailing minimum wages be determined by localities. In short, Petitioners urged that the Act requires that such minimum wage determinations must be made on a "locality" basis (41 U. S. C. §35(b), *supra*, p. 3).

The District Court (Tamm, J.) on May 6, 1954 granted Petitioners' motion for a preliminary injunction, concluding that there was doubt that the Act permitted the Secretary to make a nation-wide minimum wage determination. The Court ruled that Petitioners would be irreparably injured unless the effectiveness of the Secretary's determination were stayed pending final adjudication.

The Court limited its order to protect only the plaintiffs in the action and provided that, if the Secretary's determination is ultimately held valid, the monetary liability for minimum wages of any plaintiff who enters into a contract for Government work subject to the Act will be as full and complete as though such order had not been entered. As security therefor, the order further requires each such plaintiff, before undertaking performance of such a contract, to file an appropriate bond.

Subsequently, Hayward-Schuster Woolen Mills, Inc. and Textile Workers Union of America were permitted to intervene as defendants.

---

[2] The 28 petitioning woolen and worsted companies have plants in the following 14 states: Alabama, Connecticut, Georgia, Maine, Massachusetts, New Hampshire, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia and Wisconsin.

After argument on cross-motions for summary judgment and the Secretary's and the intervening union's motions to dismiss, the District Court (Youngdahl, J.) on February 7, 1956 rendered its opinion granting full summary judgment in favor of the Secretary and the intervening parties.[3]

On February 10, 1956 the Court entered an order in accordance with its opinion and at the same time entered an order which stayed its judgment and continued, pending appeal, the May 6, 1954 preliminary injunction on condition that the stay would expire after March 12, 1956 unless extended by appellate court action and that all plaintiffs would remain subject to the requirements of the 1954 preliminary injunction order, including its bonding requirements.

In its opinion (Appendix A, *infra*, p. 16) the Court held that the Court of Appeals decision in the *Covington Mills* case "necessarily controls" its decision as to the scope of the Secretary's authority under Section 1(b) of the Act on the "locality" issue. In that case the Court of Appeals upheld the Secretary's similar nation-wide minimum wage determination for the cotton textile industry.

Reasons for Granting the Writ

1. This case presents an important question of Federal law which has not been but should be decided by this Court. Indeed, it was Congress' intention that it should be. When Congress in 1952 passed the Fulbright Amendment to the

[3] The Court also denied in part and granted in part the Secretary's motion to dismiss directed toward all plaintiffs except those three whose standing to sue had been conceded by the Secretary. At the same time the Court denied the intervening union's motion to dismiss made on the ground that Congress could not under Article III of the Constitution provide for judicial review of the Secretary's administrative action. Subsequently, the intervening union appealed such denial (No. 13,190).

Act (41 U. S. C. §43a(b)), it intended[4] to provide "constitutional legislation" permitting the judicial review of minimum wage determinations made under the Act which this Court had earlier held could not be had without such legislation. *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 125 (1940). The Secretary himself admitted in his abovementioned January 30, 1954 proposed determination that Congress intended that the issue of the scope of the Secretary's authority under Section 1(b) of the Act should be subject to "ultimate judicial resolution."[5] But, from the date of the *Lukens Steel* decision to the present pending petitions for certiorari in both this case and the *Covington Mills* case, this Court has had no opportunity to consider this question. In the *Lukens Steel* decision this Court did not directly or indirectly pass upon the statutory mandate as to "locality"; it dealt solely with the question of the standing to sue of plaintiffs in that case.

The question here presented necessarily involves the scope of authority of a Government official and the standards for its exercise imposed by the Congress; its resolution is of vital concern to every industry throughout the United States whose members contract with the Government. Accordingly, this question would be of sufficient importance to warrant consideration on the merits by this Court even if Congress had not indicated so clearly that the matter should be brought here for "ultimate judicial resolution".

This case presents a significant question as to the construction of an important statute and certiorari should be granted for this reason. See, e. g., *U. S.* v. *Ruzicka*, 329 U. S. 287, 288 (1946); see also *Shapiro* v. *U. S.*, 335 U. S.

---

[4] 98 Cong. Rec. 6531 (1952).

[5] 19 Fed. Reg. 535, 537 (1954).

1, 4 (1948). Moreover, the petition herein should be acted on favorably by this Court "because of the novelty and importance of the principal question". *U. S.* v. *Standard Oil Co.*, 332 U. S. 301, 302 (1947); see also *U. S.* v. *Powell*, 330 U. S. 238, 240 (1947).

2. Certiorari should also be granted because, while there can be no conflict between Circuits on the question presented here, since proceedings for judicial review of any wage determination by the Secretary can be initiated only in the District of Columbia,[6] there is a conflict of decisions within the District of Columbia Circuit itself.

In 1939 the Court of Appeals in the *Lukens Steel* case held by a two to one majority that the establishment of a single prevailing minimum wage for a "locality" consisting of thirteen states, a portion of a fourteenth, and the District of Columbia (not to mention the entire nation) "goes so far beyond any possible proper application of the word [locality] as to defeat its meaning and to constitute an attempt arbitrarily to disregard the statutory mandate".[7] But in 1955 the Court of Appeals in the *Covington Mills* case ruled by a two to one majority that the Secretary had authority to make a *nation-wide* minimum wage determination. The majority brushed aside the earlier ruling of the same Court in *Lukens Steel* on the untenable ground that this Court's reversal, on an entirely different basis, of the judgment in that case, left the earlier opinion "without value as a precedent" as to the invalidity of a nation-wide minimum wage determination (Appendix B, *infra*, p. 24 n. 2).

---

[6] See 28 U. S. C. § 1391(b); *Grandillo* v. *Perkins*, 36 F. Supp. 546 (N. D. Ohio 1940); cf. *Smart* v. *Woods*, 184 F. 2d 714 (6th Cir. 1950), cert. den. 340 U. S. 936 (1951).

[7] *Lukens Steel* case, *supra*, 107 F. 2d 627, 630 (D. C. Cir. 1939).

On the other hand, Circuit Judge Washington, in his dissent in the *Covington Mills* case, relied on the earlier *Lukens Steel* opinion and observed that the central issue was whether the Act was intended to establish a nation-wide wage standard for Government contractors or a standard based on wages prevailing in the contractor's own community and that the Court of Appeals had held in *Lukens Steel* that the language of the statute clearly established the latter standard:

> "The opinion—an exhaustive one—was written by Associate Justice Justin Miller, and was concurred in by Associate Justice Fred M. Vinson, who had become a member of this court after serving in Congress during the very period in which the Walsh-Healey Act was passed. The reasoning of the opinion seems to me unanswerable." (Appendix B, *infra*, p. 30)

It is thus apparent that there is a wide divergence of opinion on the question here presented and that there is a conflict in the decisions of the Court of Appeals for the District of Columbia Circuit. It is respectfully submitted that certiorari here, as in other instances, should be granted "because of this intracircuit conflict." *Dickinson* v. *Petroleum Corp.*, 338 U. S. 507, 508 (1950); *John Hancock Ins. Co.* v. *Bartels*, 308 U. S. 180, 181 (1939).

3. It is further respectfully submitted that the decision in the *Covington Mills* case which "controls" Judge Youngdahl's opinion and judgment in this case is erroneous in holding that the Act did not require the Secretary to make prevailing minimum wage determinations on a "locality" basis. Surely in a Statute of the United States, the word "locality" cannot be read as "the United States" if lan-

guage is to retain any responsible meaning. The words Congress uses may not be wholly transformed by construction or interpretation. Moreover, it is clear from the legislative history[8] that Congress used the term "locality" with its customary meaning of local area, vicinity or community. The entire Congressional history both before and after the enactment of the Statute makes clear the Congressional purpose to hold Government contractors to the wage standard of their communities; this cannot be obviated by a strained or contrived grammatical construction or analysis of Section 1(b) of the Act.

Even if the Secretary's interpretation of Section 1(b) of the Act had been consistent, little if any weight should be given to an administrative practice which, from this Court's decision in *Lukens Steel* in 1940 until enactment of the Fulbright Amendment in 1952, was immune from challenge in the courts; but in any event the Secretary's interpretation has not been consistent.[9] Nor is there anything in the post-enactment Congressional history[10] or in the Fulbright Amendment[11] to indicate Congressional approval or ratification of any interpretation of the Act by the Secretary. The Secretary himself admitted as much as to the latter when he said in the administrative proceeding in this case: "Congress did not deem it advisable

---

[8] Most succinctly set forth in the *Lukens Steel* Court of Appeals opinion, *supra*, 107 F. 2d 627, 634-35, fn. 31-32, and in Judge Washington's dissent in the *Covington Mills* case, Appendix B, *infra*, p. 30.

[9] The Labor Department at times has interpreted "locality" to apply only to the phrase "groups of industries" in Section 1(b) of the Act. See 2 Fed. Reg. 233 (1937); 19 Fed. Reg. 535 (1954). At other times the Department has interpreted the *entire* Section to be qualified by that term. See Secretary's brief in this Court in *Lukens Steel* (1940) at p. 131; Hearings on S. 2594, 82d Cong., 2d Sess. 2476-78 (1952).

[10] See 81 Cong. Rec. 3503-4 (1937).

[11] See S. Rep. No. 1599, 82d Cong., 2d Sess. 31 (1952).

to exercise its power either to reverse or affirm past practices of the [Labor] Department." [12]

There is no disagreement here as to the basic purpose of the Act which, as the Secretary says, was designed to prevent Government contracts from going to employers who pay wages which are too low. But the central issue with regard to the purpose of the Act is whether Congress intended that a manufacturer's fitness for Government business should be judged by the standards of the section or "locality" in which he conducts his business or by a national standard. The "locality" standard is clearly established by the language of the Act, by its legislative history and by the manifest Congressional purpose.

The error of a holding permitting a nation-wide prevailing minimum wage determination is most succinctly and ably set forth in Judge Washington's dissenting opinion in the *Covington Mills* case. As he says, any change of a legislative standard or substitution of a new one in its stead should not be achieved "through strained administrative and judicial interpretation." [13]

4. Petitioners respectfully request that certiorari be granted before judgment in the Court of Appeals. The question of statutory construction and, therefore, of the scope of the Secretary's authority is identical in this case and in the *Covington Mills* case now pending before this Court. Since the Court of Appeals denied a petition for rehearing *en banc* in that case, it is, to say the least, unlikely that that Court would in this case change its point of view. Accordingly, a decision by the Court of Appeals here would be of no more assistance to this Court in disposing

[12] 19 Fed. Reg. 535, 537 (1954).

[13] Appendix A, *infra*, p. 32.

of the single issue herein presented than the Court of Appeals decision already rendered in the *Covington Mills* case.

Furthermore, where two cases presenting an identical question of great importance have proceeded through the lower courts as nearly concurrently as differences in the timing of the administrative action and the vagaries of litigation permitted, the parties to one of such proceedings, such as the Petitioners herein, should have the opportunity with the parties to the other to present simultaneously to this Court, as the court of last resort, the grounds upon which they both instituted and carried on their respective actions. See e. g. *Brown* v. *Board of Education*, 344 U. S. 1, 3; and thereafter *Bolling* v. *Sharpe*, 344 U. S. 873 (1952). In addition, the presentation of views by both will, we believe, be of real assistance to the Court. It would appear, therefore, to be in the public interest to consider Petitioners' cause along with that of petitioners in the *Covington Mills* case if certiorari is granted therein.

This Court has granted petitions for a writ of certiorari before judgment in a number of other analogous cases. See e. g. *Brown* v. *Board of Education*, 344 U. S. 1, 3 (1952); *Graham & Foster* v. *Goodcell*, 282 U. S. 409, 415 (1931); *Johnson* v. *Fleet Corporation*, 280 U. S. 320, 325 (1930); *White* v. *Mechanics Securities Corp.*, 269 U. S. 283, 299 (1925), where this Court granted certiorari before judgment to petitioners whose cases, then pending before judgment in a Court of Appeals, raised questions identical with those present in other cases in which certiorari had been granted.

Moreover, whether or not this Court grants certiorari in the *Covington Mills* case it should grant Petitioners' request for a writ of certiorari before judgment not only

for all the reasons above presented but also "to avoid further futile proceedings". *Stainback* v. *Mo Hock Ke Lok Po*, 336 U. S. 368, 371 (1949). Here the decision of the District Court was "controlled" by the Court of Appeals opinion in the *Covington Mills* case as to which that Court denied a petition for rehearing *en banc*. In these circumstances an intermediate appeal to the Court of Appeals would be of no value. For this reason also, it is appropriate that certiorari should now be granted.

Conclusion

For all the foregoing reasons, Petitioners pray that the writ of certiorari before judgment be granted. If certiorari is granted in this case and the *Covington Mills* case, petitioners suggest that it would be appropriate for the Court to hear the two cases together.

Respectfully submitted,

STUART N. SCOTT,
WILLIAM J. KRIDEL,
ALBERT J. COAKLEY,
40 Wall Street,
New York 5, New York.

C. ROGER NELSON,
FRANKLIN M. SCHULTZ,
910 Seventeenth Street, N. W.,
Washington 6, D. C.,

Attorneys for the Petitioners.

Dated, March, 1956

APPENDIX A

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

THE ALLENDALE COMPANY, *et al.*,
Plaintiff,

v.

JAMES P. MITCHELL, Secretary of Labor,
Defendant,

and

TEXTILE WORKERS UNION OF AMERICA, CIO, HAYWARD-SCHUSTER WOOLEN MILLS, INC.
Intervenors.

Civil Action No. 1630-54.

MEMORANDUM

This cause came on to be heard on defendant's motions to dismiss and for summary judgment and on motions of plaintiffs and of intervenors for summary judgment.

Plaintiffs, woolen manufacturers, challenge the minimum wage determination made by the Secretary of Labor for the Woolen and Worsted Industry under the Walsh-Healey Public Contracts Act. 41 U. S. C. 35-45.[1] Initially,

[1] The Act provides, in significant part, as follows (41 U.S.C. 35): "That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnish-

in 1949 and 1950, the Secretary found the minimum wage for persons employed in the Woolen and Worsted Industry to be $1.05 per hour. This determination was modified on April 1, 1954 when the Secretary, after notice and hearing, determined that the prevailing minimum wage in the Broad Woven Goods, Yarn and Thread Branch of the Industry and Pressed Felt was $1.20 per hour.

Plaintiffs seek a declaratory judgment that the determinations are unlawful and for a permanent injunction restraining enforcement. While the number of plaintiffs has varied during the course of these proceedings, some thirty-one are presently on record before the Court. The Textile Workers Union of America, CIO, and Hayward Schuster Woolen Mills, Inc., have intervened as parties defendant.

In 1952 Congress passed the Fulbright Amendment, 41 U. S. C. 43(a) as a rider to the Defense Production Act of 1952.[2] This was designed to modify the decision of the

---

ing of materials, supplies, articles and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations:

* * * * * *

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract; * * *."

[2] 41 U. S. C. 43(a) "Notwithstanding any provision of section 1004 of Title 5, sections 1001-1011 of Title 5 shall be applicable in the administration of sections 35-39 and 41-43 of this title.

(b) All wage determinations under section 35(b) of this title shall be made on the record after opportunity for a hearing. Review of any such wage determination, or of the applicability of any such wage determination, may be had within ninety days after such determination is made in the manner provided in section 1009 of Title 5 by any person adversely affected or aggrieved thereby, who

Supreme Court in *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113 (1940), which held that no manufacturer in an industry affected by a wage determination had standing to challenge its validity. The Amendment included a provision for judicial review of wage determinations and made certain sections of the Administrative Procedure Act applicable to the administration of the Walsh-Healey Act.

Plaintiffs contend that the Secretary had no authority to establish a single nation-wide minimum wage, and even assuming *arguendo* the existence of such authority, they contend that the $1.20 determination is not supported by evidence in the record. Plaintiffs also argue that this determination effectively constitutes illegal wage fixing; that the wage data relied upon were obsolete; that the "similar work" finding was improper as it was applied to workers in all occupations in the industry, even occupations dissimilar to the ones studied; that the Secretary is not empowered to make determinations for segments of an industry; and that notices relating to both hearings were defective.

Defendant moves to dismiss the complaints of all but three of the plaintiffs, asserting that they are not adversely affected or aggrieved within the meaning of the Fulbright Amendment and so lack standing to sue. As against plaintiffs whose complaints are not dismissed, defendant moves for summary judgment on the ground that the prevailing minimum wage determination on an industry-wide basis is authorized by the statute; that the particular determination involved herein is amply supported by evidence in the

---

shall be deemed to include any manufacturer of, or regular dealer in, materials, supplies, articles or equipment purchased or to be purchased by the Government from any source, who is in any industry to which such wage determination is applicable.

(c) Notwithstanding the inclusion of any stipulations required by any provision of sections 35-45 of this title in any contract subject to said sections, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the terms 'locality', 'regular dealer', 'manufacturer', and 'open market.' "

record; and that all other objections of plaintiffs, both as to procedure and substance, are without merit.

Intervenors seek to have the Fulbright Amendment declared unconstitutional.

The recent decision by the United States Court of Appeals in *Mitchell* v. *Covington Mills, Inc., et al.*, Nos. 12650-5 (D. C. Cir. Dec. 1, 1955), necessarily controls this case. It was there held that the Secretary of Labor properly interpreted the Walsh-Healey Act as permitting an industry-wide determination of prevailing minimum wages.

Since the Fulbright Amendment provides review of the Secretary's determination to certain members of an industry to which the determination applies, the initial question is whether such members need make a showing of adverse effect or whether the fact of being part of an industry affected is enough. The District Court has been instructed to decide which plaintiffs have standing, and to dismiss the complaints of those who do not, unless the government withdraws its motion to dismiss or the plaintiffs consent to it. *Mitchell* v. *Covington Mills, Inc., et al., supra.*

In light of the *Covington Mills* case, the Court is disinclined to determine the constitutionality of the Fulbright Amendment. Its constitutionality is assumed. The Court is satisfied that it should be strictly construed and that it does not establish a conclusive presumption of standing in favor of any manufacturer in the industry affected by the determination. Proper parties must show some direct and actual injury from the Secretary's determination. Abstract or potential injury is not enough.

As against those plaintiffs who failed to seek judicial review within 90 days after the prevailing minimum wage determination was made, but did so within 90 days from date it became effective, the motion to dismiss should not be granted. They comply with the 90-day requirement, but would not have done so merely by joining with other plaintiffs who themselves brought suit seasonably.

The complaints should be dismissed of those plaintiffs who paid their employees $1.20 per hour or more during the interrogatory period and/or were not parties to any government contract, whether or not they may anticipate

having such contracts. Where such large sums are involved, however, we are not prepared to apply a *de minimus* rule against those companies whose wage deficiencies, had the determination been in effect between April 1, 1953 and March 31, 1954, would have been insubstantial because they involved less than 1% of their total payrolls. Their complaints will not be dismissed. Jurisdiction under the Fulbright Amendment is thus had only of those plaintiffs who filed seasonably, were parties to government contracts, and who paid less than $1.20 per hour. They do show adverse effect from the determination.

As to these plaintiffs, the record amply supports the Secretary's determination. It rested upon a finding of industry-wide competition. Furthermore, the Court cannot conclude that the Secretary misapplied the "similar work" standard of the Act by restricting the determination to the wages paid in the Woolen and Worsted Industry or acted incorrectly in selecting certain low-wage occupations as a basis for determining the prevailing minimum wage in this branch of the industry. The notice of the hearing on the Secretary's determination appears to have reasonably defined statutory terms and to have indicated the subjects and issues involved. No convincing argument has been made as to why the determination cannot apply to a particular branch of an industry as opposed to covering it all. Lastly, the Court is satisfied that the determination is not rendered invalid because based upon wage data nearly two years old. It should be noted that part of the reason for delaying the ultimate determination was that plaintiffs were granted a second hearing after the Secretary proposed $1.20 as the prevailing wage, at which time they were unable to show a change in the prevailing wage as they had proposed to do. It was thus reasonable to presume the continuance of the facts as had previously been found.

Due to our resolution of this case, defendant's motion to dissolve the preliminary injunction is rendered moot.

Counsel for defendant will prepare a detailed order consistent with these findings.

s/ LUTHER W. YOUNGDAHL
Judge

February 7th, 1956

UNITED STATES DISTRICT COURT,

FOR THE DISTRICT OF COLUMBIA

THE ALLENDALE COMPANY, *et al.*,
Plaintiffs,

vs.

JAMES P. MITCHELL, Secretary of Labor
Defendant

and

TEXTILE WORKERS UNION OF AMERICA, CIO,
HAYWARD-SCHUSTER WOOLEN MILLS, INC.,
Intervenors

Civil Action No. 1630-54.

ORDER.

This cause came on to be heard on motions to dismiss and for summary judgment filed by the defendant James P. Mitchell, Secretary of Labor, and intervenor Textile Workers Union of America, and on motion for summary judgment filed by intervenor Hayward-Schuster Woolen Mills, Inc., and on motion for summary judgment filed by the plaintiffs, and the Court having considered the motions, the pleadings, the interrogatories and the answers thereto, the plaintiffs' affidavits, the stipulations and admissions of counsel, and the record of the administrative proceeding referred to in the pleadings and filed in this cause; pursuant to the Memorandum Opinion filed herein on February 7, 1956 which the Court adopts as its Findings of Fact and Conclusions of Law, it is by the Court this 10 day of February, 1956,

ORDERED, ADJUDGED AND DECREED:

1. That the motions for summary judgment filed by defendant and intervenors be and they hereby are granted and the motion for summary judgment filed by plaintiffs be and it hereby is denied.

2. The motions to dismiss the complaint are granted as to the following plaintiffs: Abbot Worsted Company, The Allendale Company, Ames Textile Corporation, Avery Process Corporation, Branch River Wool Combing Company, Inc., Cascade Woolen Mill, Crescent Woolen Mills Company, Hampton Looms of Virginia, Inc., Kent Manufacturing Company, Maine Spinning Company, Marrinar and Company, Inc., Methuen International Mills, The Orr Felt and Blanket Company, Pacific Mills, Philadelphia Felt Company, Rochambeau Worsted Company, Southwell Combing Company, Springfield Woolen Mills Company, and Wyandotte Worsted Company, on the ground that these plaintiffs paid their employees subject to the Walsh-Healey Public Contracts Act $1.20 per hour or more during the interrogatory period or were not parties to any government contract during that period.

3. The motions to dismiss are denied as to Edenfield Mills, Inc., Bachmann Uxbridge Worsted Corp., Sidney Blumenthal & Co., Inc., Continental Mills, Inc., J. P. Stevens & Co., Inc., and Whittier Mills Company which are the plaintiffs that filed within 90 days of the effective date of the Secretary's determination, had government contracts during the interrogatory period and paid to employees to whom the Walsh-Healey Public Contracts Act applies less than $1.20 per hour during that period.

4. The motions of the defendant and the intervenors for summary judgment are granted and summary judgment is entered for the defendant and the intervenors as to Edenfield Mills, Inc., Bachmann Uxbridge Worsted Corp., Sidney Blumenthal & Co., Inc., Continental Mills, Inc., J. P.

Stevens & Co., Inc., and Whittier Mills Company, and Burlington Mills Corp., Chatham Mfg. Co., and Leaksville Woolen Mills, Inc.

5. That the motion of intervenor Textile Workers Union of America-CIO to dismiss on a claim of unconstitutionality of the Fulbright Amendment be and it hereby is denied.

6. That the motions to dissolve the stay and preliminary injunction filed by the defendant and intervenors herein be and they hereby are dismissed as moot.

7. This order is entered without costs.

s/ LUTHER W. YOUNGDAHL,
Judge.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

JAMES P. MITCHELL, Secretary of Labor, APPELLANT

v.

COVINGTON MILLS, INC., *et al.*, APPELLEES

Appeals from the United States District Court for the District of Columbia

---

Decided December 1, 1955

Messrs. Stuart Rothman, Solicitor, Department of Labor, of the bar of the Supreme Court of Minnesota, *pro hac vice*, by special leave of Court, and *Edward H. Hickey*, Attorney, Department of Justice, with whom *Assistant Attorney General Burger*, *Miss Bessie Margolin*, Assistant Solicitor, Department of Labor, and *Mr. William A. Lowe*, Attorney, Department of Labor, were on the brief, for appellant in Nos. 12650 and 12651.

Mr. Warren F. Farr, of the bar of the Supreme Judicial Court of Massachusetts, *pro hac vice*, by special leave of Court, with whom *Mr. John W. Cragun* was on the brief, for appellants in Nos. 12652 and 12653. *Mr. Robert W. Barker* also entered an appearance for appellants in Nos. 12652 and 12653.

Mr. David E. Feller, with whom *Mr. Arthur J. Goldberg* was on the brief, for appellant in Nos. 12654 and 12655.

Messrs. Whiteford S. Blakeney, of the bar of the Supreme Court of North Carolina, *pro hac vice,* by special leave of Court, and *W. Glen Harlan,* with whom Mr. *Llewellyn C. Thomas* was on the brief, for appellees.

Before EDGERTON, Chief Judge, and WASHINGTON and DANAHER, Circuit Judges.

EDGERTON, *Chief Judge:* The Walsh-Healey Public Contracts Act of 1936 provides that any government contract for more than $10,000 shall include a stipulation that all persons employed in manufacturing or furnishing goods under the contract will be paid "not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract; . . . " 41 U. S. C. § 35, 49 STAT. 2036, § 1.

The Secretary of Labor determined in January 1953, after extensive hearings, that the prevailing minimum wage in the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry was $1.00 per hour.

Two separate groups of textile manufacturers brought separate suits against the Secretary, under § 10(b) of the Act, 41 U.S.C. § 43a(b), to set aside and enjoin his determination as illegal.[1] By permission of the District Court the Textile Workers Union of America, CIO, The National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company and Hathaway Manufacturing Company intervened as defendants in support of the determination. The cases were

[1] Before its effective date, the determination was stayed as to the plaintiffs and the Secretary was temporarily enjoined from putting it into effect as to them. While that order was in force, any plaintiff who entered into a contract otherwise subject to the determination was required to post a bond to pay the prescribed wage if the determination were upheld. We entered a somewhat similar order, requiring a bond of $2,000, pending the present appeal.

consolidated for hearing in the District Court. The court awarded summary judgment to all the plaintiffs and permanently enjoined the Secretary from putting the determination into effect as to any of them, on the ground that the Secretary's authority under the Walsh-Healey Act is limited by the word "locality" and that, therefore, he may not determine a minimum wage on an industry-wide basis. The Secretary and the intervenors appeal.

The policy and purpose of the Act are plain. By statute and regulation, government contracts must go to the lowest responsible bidder. Until the Walsh-Healey Act was passed, it followed that the government, though it urged industry to maintain adequate wage standards, was often compelled to undermine them by contracting with low-wage concerns. The Walsh-Healey Act sought to support standards by withholding contracts from such concerns. "This Act's purpose was to impose obligations upon those favored with Government business and to obviate the possibility that any part of our tremendous national expenditures would go to forces tending to depress wages and purchasing power and offending fair social standards of employment. As stated in the Report of the House Committee on the Judiciary . . ., 'The object of the bill is to require persons having contracts with the Government to conform to certain labor conditions in the performance of the contracts and thus to eliminate the practice under which the Government is compelled to deal with sweat shops.' " *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 128. The Act's "purpose is to use the leverage of the Government's immense purchasing power to raise labor standards." *Endicott Johnson Corp.* v. *Perkins*, 317 U. S. 501, 507.

The Secretary's findings of fact make it clear that in the textile industry, unlike some industries, only an industry-wide minimum will serve this purpose, because the competition is industry-wide. The District Court's construction of the Act would make it necessary for the Secretary to fix separate minima according to the wages that prevail in each separate textile community. This would

freeze the competitive advantage of concerns that operate in low-wage communities and would in effect offer a reward for moving into such communities. Obviously this would defeat the purpose of the Act. It would also make the Act nearly meaningless as applied to a large part of the textile industry, since there is frequently only one textile concern in one neighborhood and it necessarily pays the wages that prevail in its plant.

Because the Walsh-Healey Act uses the word "locality", the appellees say that the plain meaning of the Act forbids the Secretary to fix an industry-wide minimum. As to the "plain meaning" of an Act of Congress the Supreme Court has said: "When that meaning has led to absurd or futile results . . . this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words." *United States* v. *American Trucking Ass'ns, Inc.*, 310 U. S. 534, 543.

Moreover, it is not true that the plain meaning of the Wash-Healey Act forbids the Secretary to fix an industry-wide minimum in this case. It is not plain that every minimum wage determination under the Act must be limited to a "locality". It is not even plain that a large group of States can never be a "locality".[2] The word occurs only in the phrase "currently operating in the locality".[3] The phrase is not plainly intended to qualify

---

[2] In *Lukens Steel Co.* v. *Perkins*, 70 App. D. C. 354, 107 F. 2d 627, this court expressed a different view. But the Supreme Court reversed the judgment of this court, and affirmed the judgment of the District Court dismissing the complaint, on the ground that the plaintiffs had no standing to sue. *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113. This of course left the opinion, as well as the judgment, of this court without value as a precedent.

[3] It has been suggested that the words "in the locality" are not necessarily tied to the words "currently operating", and that "similar work . . . in the locality" is a possible reading. But since it is by no means the only possible reading it is not the "plain meaning" of the Act.

any other term than "groups of industries". It may or may not be intended to qualify "the particular or similar industries". It can hardly be intended to qualify "similar work", for "work . . . currently operating in the locality" would be a strange expression. The Secretary found that a dollar an hour is the prevailing minimum on "similar work". He also found that it is the prevailing minimum in the particular industry. In our opinion these findings were fully warranted.

The Secretary's interpretation of the Act as permitting industry-wide determinations of minimum wages is not new. In this industry and many others, during many years, the Secretary has made many such determinations. See, *e.g.*, 41 C.F.R. Parts 202 *et seq.* His practice in this respect has repeatedly been called to the attention of committees of Congress. Attempts have been made to write his interpretation expressly into the Act. Attempts have also been made to write it expressly out of the Act. Both have failed. Congress has chosen to leave the interpretation of the Act to the Secretary and the courts. As the Supreme Court said in regard to a different but somewhat related statute, the Fair Labor Standards Act, "We decline to repudiate an administrative interpretation of the Act which Congress refused to repudiate after being repeatedly urged to do so." *Alstate Construction Co.* v. *Durkin*, 345 U. S. 13, 17.

Appellees point out that "purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market" are exempt from the statutory requirement of a stipulation that employees will be paid not less than the prevailing minimum determined by the Secretary. 41 U. S. C. §43, 49 STAT. 2039, §9. But this exemption has nothing to do with the only matter here in issue, which is the validity of the Secretary's determination. The Secretary determined nothing with regard to the exemption. He determined that "The minimum wage for persons employed in the manufacturing or furnishing of the products of the Cotton, Silk, and Synthetic Textile Branch of the Textile Industry under contracts subject to

the Walsh-Healey Public Contracts Act shall be $1.00 an hour arrived at either on a time or piece-rate basis." He did not undertake to decide to what contracts the Walsh-Healey Act, and therefore the minimum wage determination, are applicable. The complaints in these suits do not ask the court to decide that question.[4]

In our opinion the plaintiffs' other objections to the Secretary's determination are likewise invalid.

The District Court thought it need not rule on a motion of the Secretary to dismiss the complaints, on jurisdictional grounds, as to 144 of the 158 plaintiffs. But the fact that some of the plaintiffs clearly have standing, under the Fulbright Amendment, to seek review of the Secretary's determination, confers no standing on others. We think the District Court should decide, in the first instance, which plaintiffs have standing. *Cf. B. F. Goodrich Co.* v. *Federal Trade Commission*, 93 U. S. App. D. C. 50, 56, 208 F. 2d 829, 834. The case is remanded with instructions to rule on the motion to dismiss, unless the government withdraws it or the plaintiffs concerned consent to it. As against plaintiffs who are not dismissed, judgment should be entered for the defendant.

Reversed and remanded.

---

[4] It is therefore immaterial that the Fulbright Amendment to the Walsh-Healey Act provides that review of the "applicability" of a minimum wage determination may be had by any "person adversely affected or aggrieved". 66 Stat. 308, 41 U.S.C. §43a(b). The Fulbright Amendment also provides that "Notwithstanding the inclusion of any stipulations required by any provision of sections 35-45 of this title in any contract subject to said sections, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the terms 'locality', 'regular dealer', 'manufacturer', and 'open market'." 41 U.S.C. § 43a(c). That is, a contractor who has been required to include a minimum wage stipulation in a contract need not perform the stipulation if the requirement was not in accordance with law. This is irrelevant here.

DANAHER, *Circuit Judge*, concurring: I concur in the entire opinion by Chief Judge Edgerton.

I feel impelled to say this: were it not for *Textile Workers Union of America, CIO* v. *The Allendale Company, et al.*,[1] I would dismiss 144 plaintiffs on the present record. Moreover, I believe the District Court should have denied intervention by defendants National Association of Cotton Manufacturers, Berkshire Fine Spinning Associates, Inc., Fitchburg Yarn Company, Hathaway Manufacturing Company and the Textile Workers Union of America, CIO, who are now here as appellants on the side of the Secretary. The Supreme Court held[2] in 1940 that determinations by the Secretary under the Walsh-Healey Act[3] as it then was written, are not judicially reviewable. The Act "was not intended to be a bestowal of litigable rights upon those desirous of selling to the Government; it is a self-imposed restraint for violation of which the Government—but not private litigants—can complain."[4] The function of the Secretary, acting in behalf of the Government, is to find the facts,[5] and make his determination which shall be conclusive upon all agencies of the United States. The Act was designed to permit the Government to supply its needs without the delays necessarily incident to judicial supervision of administrative procedure. "If the general law permits prospective bidders to challenge each wage determination of the Secretary in the courts, by a like token all employees affected could obtain judicial review."[6] We have been advised

---

[1] ..... U.S. App. D.C. ....., ...F. 2d ....., decided July 15, 1955. But see the dissenting opinions.

[2] Perkins v. Lukens Steel Co., 310 U.S. 113, 128 (1940).

[3] 49 STAT. 2036-2040 (1936), as amended, 41 U.S.C. §§ 35-45 (1952).

[4] *Supra* note 2, 310 U.S. at 127.

[5] § 4, 49 STAT. 2038 (1936), as amended, 41 U.S.C. § 38 (1952); (re the fact-finding function see Shannahan v. United States, 303 U.S. 596, 599 (1938)).

[6] *Supra* note 2, 310 U.S. at 131.

that "Courts should not, where Congress has not done so, subject purchasing agencies of the Government to the delays necessarily incident to judicial scrutiny at the instance of potential sellers, which would be contrary to traditional governmental practice and would create a new concept of judicial controversies."[7] Not only do such expressions by the Court correctly, in my opinion, reflect the understanding and purpose of the Congress, but this case illustrates peculiarly the situation which Congress sought to avoid. It is now nearly three years since the Secretary's determination was promulgated, and it is no more nearly effective now than when it was first made. Yet 144 plaintiffs and 5 defendants as "parties" in the District Court still, because of their status as parties, respectively have rights of appeal no matter which way our order goes.[8]

It is said that these "parties" are thus able completely to frustrate the reasonable fulfillment of the Congressional objective because "rights" have been conferred upon them by the Fulbright amendment,[9] adopted in 1952. In terms it was provided that review "may be had within 90 days after such determination is made," and ten of the original plaintiffs sought review after the 90 days statutory period had expired. As to them the motion to dismiss should be granted. The Fulbright amendment further provided that review was to be had only "by any person adversely affected or aggrieved" by the determination. Only 14 plaintiffs have made a showing that the determination "results in direct and immediate injury."[10] So, I would dismiss as to 144 "plaintiffs," leaving only the 14 in the Alabama case and none in the Covington case. The named intervening appellants by the Secretary's determination have not been subjected to or threatened with any

---

[7] *Id.* at 130.

[8] Cf. Fishgold v. Sullivan Corp., 328 U.S. 275 (1946); Boston Tow Boat Co. v. U. S., 321 U. S. 632, 633 (1944).

[9] 41 U.S.C. §43(a) (1952).

[10] National Coal Ass'n v. Federal Power Commission, 89 U.S. App. D.C. 135, 138, 191 F. 2d 462, 465 (D.C. Cir. 1951).

legal wrong. They have shown no independent legal right. They are not "private Attorney Generals,"[11] and the Secretary is ably represented here by the Attorney General. Even the Fulbright amendment confers no standing upon those who appear on the side of the Secretary. I believe their intervention never should have been allowed.

This is not a case involving a determination of public convenience and necessity such as *National Coal Ass'n* v. *Federal Power Commission.*[12] This is not a case like *Columbia System* v. *United States,*[13] where "the regulations purport to operate to alter and affect adversely appellant's contractual rights and business relations with station owners whose applications for licenses the regulations will cause to be rejected and whose licenses the regulations may cause to be revoked." This is not a case like *Associated Industries* v. *Ickes,*[14] where by administrative order, the minimum prices at which coal could be sold were increased, thus affecting the very basis upon which transactions in the coal business could be conducted. Nor is the case like *United States Cane Sugar Refiners' Ass'n* v. *McNutt,*[15] or *Longshoremen's Union* v. *Boyd,*[16] where the suit was dismissed for want of a "case or controversy." This is a case, *sui generis,* where "Congress, as incident to its power to authorize and enforce contracts for public works, may require that they shall be carried

---

[11] Associated Industries v. Ickes, 134 F. 2d 694, 704 (2d Cir. 1943), *order vacated,* 320 U.S. 707 (1943). The able opinion by Judge Frank treats of almost every conceivable situation except that presented on the record here.

[12] *Supra* note 10. (Even there Judge Clark, in his dissent, argued well that the petitioners were not "parties aggrieved" within the meaning of the Natural Gas Act.)

[13] 316 U.S. 407, 422 (1942).

[14] *Supra* note 11.

[15] 138 F. 2d 116 (2d Cir. 1943) (where the petition was dismissed for lack of jurisdiction).

[16] 347 U. S. 222 (1954). (The point is certainly present here.)

out only in a way consistent with its views of public policy. . . .'"[17] No one is forced to bid for Government contracts. Not foreign to our problem are the considerations reasoned by this court in *Alabama Power Co.* v. *Ickes.*[18] I believe the Congressional interest in the attainment of the objectives of the Walsh-Healey Act and the Government's undoubted right to lay down the conditions upon which its own business will be conducted compel a strict construction of the Fulbright amendment. Any other view makes a shambles of the Walsh-Healey Act, for the delays and confusion occasioned by the hordes of "parties" render a determination obsolete and ineffective. Thus those who properly may be parties are those, and only those, who can show themselves by direct and immediate injury to have been adversely affected or aggrieved by the Secretary's determination.

WASHINGTON, *Circuit Judge,* dissenting: The central issue here, of course, is whether the Walsh-Healey Act was intended to establish a nation-wide wage standard for Government contractors, or a standard based on wages prevailing in the contractor's own community. To my mind the language of the statute clearly establishes the latter standard. This court so held in a case decided shortly after the passage of the Act. *Lukens Steel Co.* v. *Perkins,* 70 App. D. C. 354, 107 F. 2d 627 (1939). The opinion—an exhaustive one—was written by Associate Justice Justin Miller, and was concurred in by Associate Justice Fred M. Vinson, who had become a member of this court after serving in Congress during the very period in which the Walsh-Healey Act was passed. The reasoning of the opinion seems to me unanswerable. And the legislative history there recited shows with complete clarity what Congress intended: that bidders for Government contracts "shall pay the prevailing wages in the community where the work is performed."[1]

---

[17] *Ellis* v. *United States,* 206 U. S. 246, 256 (1907).

[18] 67 App. D. C. 230, 91 F. 2d 303 (D. C. Cir. 1937), *aff'd,* 302 U. S. 464 (1938).

[1] Congressman Greenwood at 80 Cong. Rec. 9993; quoted at p. 362 of 70 App. D. C., p. 635 of 107 F. 2d, together with numerous similar statements.

Our decision in *Lukens* was reversed by the Supreme Court on another ground—that the complainants lacked standing to sue. *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113 (1940). The obstacle has now been removed by the Fulbright Amendment, passed in 1952, 41 U. S. C. §43a (1952). Technically, in dealing with the present case, we are not "bound" by our decision in *Lukens*, even though the Supreme Court did not reach the merits of that case. But its reasoning remains sound, and has not been disturbed by anything which has happened since. As far as the argument based on continued administrative interpretation is concerned, I would suppose that we were not entitled to give much weight to action which was until a short time ago completely immune to judicial review. Nor, under the circumstances here, does congressional failure to amend an act already clear on its face seem to be in any sense declaratory of the correctness of the Secretary's interpretation. The latest pronouncement of Congress—the Fulbright Amendment—certainly makes no such declaration: its passage might suggest, indeed, that Congress was not content with the Secretary's action, and wished it to be reviewed by the courts. The relevant Committee Report specifically states that failure to amend the "locality" provision of the Act is to be without prejudice to a judicial determination of the meaning of that provision. S. Rep. No. 1599, 82d Cong., 2d Sess. 31 (1952).

It is argued that to give the "locality" provision its ordinary meaning would produce an undesirable result. But—whether or not that is so—our function is to determine what Congress thought desirable, rather than to give expression to our own views on social legislation. It is also said that the purpose of the Act would be defeated by such an interpretation. But I think the majority misconceives the purpose of the Act, as revealed in the light of conditions prevailing in 1936, when it was passed. At that time, and before, it was generally thought that the Federal Government lacked power to undertake broad regulation of wages and labor standards. Control of Government contracts was thought possible, however, and

in 1931 the Bacon-Davis Act was passed, imposing certain wage regulations in the field of Government construction contracts, 46 Stat. 1494. In 1935 that Act was substantially revised and strengthened, 49 Stat. 1011. The 1935 revision provided—in language derived from the earlier legislation—for wage determinations based on conditions prevailing in the "city, town, village, or other civil subdivision" where the contract is to be performed. In 1936 the Walsh-Healey Act was passed to cover the field of supply contracts. Here Congress used the "locality" provision we have been discussing. Obviously both acts are based on the same philosophy and point to a standard limited to a fairly small area and to a restricted objective: that of preventing contractors from cutting wages below prevailing community levels in an effort to pare costs and thus be the lowest bidder. As the legislative history shows, there was no thought of raising wages, or of eliminating regional differentials. See *Lukens* at p. 362 of 70 App. D. C., 635 of 107 F. 2d.

Later, of course, greater breadth of Federal power was recognized. The Supreme Court's decision in *National Labor Relations Board* v. *Jones & Laughlin Steel Co.*, 301 U. S. 1 (1937), opened the door to more sweeping congressional action. Problems such as that of the "runaway industry," which were not intended to be dealt with by the Walsh-Healey Act, but which may underlie the Secretary of Labor's approach to that Act, may now be dealt with by explicit Federal legislation. Congress has gone far in this direction through the Fair Labor Standards Act and its amendments. Indeed, under an amendment shortly to come into effect, the minimum F. L. S. A. wage will be raised to a dollar an hour. Public Law 381, 84th Cong., 1st Sess. §3 (1955). That, of course, is the same as the secretary's determination here. Surely it is better to reach decisions of that sort through congressional debate and action, rather than through strained administrative and judicial interpretation of a statute passed years ago for a different and more limited purpose.

UNITED STATES COURT OF APPEALS,

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

January Term 1956

JAMES P. MITCHELL, Secretary of Labor, et al.,
Appellants,

vs.

COVINGTON MILLS, et al.,
Appellees.

Before: Edgerton, Chief Judge, and Prettyman, Wilbur K. Miller, Bazelon, Fahy, Washington, Danaher and Bastian, Circuit Judges, in Chambers.

ORDER

Upon consideration of appellees' petition for a rehearing *en banc* in the above cases, and of appellants' answer thereto, it is

ORDERED by the Court that the aforesaid petition be, and it is hereby, denied.

Per Curiam.

Dated: January 10, 1956

Circuit Judges Wilbur K. Miller and Bastian would grant the petition for rehearing *en banc*.

MEMORANDUM

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 755

THE ALLENDALE CO., *et al., Petitioners*

v.

JAMES P. MITCHELL, SECRETARY OF LABOR, *et al.*

On Petition For A Writ Of Certiorari Before Judgment To The United States Court Of Appeals For The District Of Columbia Circuit

---

MEMORANDUM FOR RESPONDENT SECRETARY OF LABOR IN OPPOSITION

The petition seeks a writ of certiorari, before judgment by the Court of Appeals, for review of the judgment of the District Court solely on the "identical" question of statutory construction

presented by the petition for a writ of certiorari filed in No. 682, *Covington Mills, Alabama Mills, Inc. et al.* v. *James P. Mitchell, Secretary of Labor,* certiorari denied, March 26, 1956. Certiorari in *Covington* was opposed by respondent Secretary of Labor (see our Brief in Opposition filed March 8, 1956). Not only do the reasons and considerations militating against review, fully discussed in our Brief in Opposition in *Covington,* apply equally to the instant petition, but there are additional reasons why the grant of certiorari in the instant case would be inappropriate. Accordingly, we oppose certiorari.

1. We respectfully refer the Court to our Brief in Opposition in *Covington* instead of repeating the discussion there detailed. The petition here presents no reasons in support of certiorari other than those fully and adequately presented in the *Covington* petition. All factors and considerations pertinent to the common issue in these two cases were fairly and adequately presented by the *Covington* record. Certiorari should be denied here as in that case.

2. The status of the instant case in the Court of Appeals, and the state of the voluminous record which has been hastily transmitted to this Court without selection of the relevant parts, afford substantial additional reasons for denying certiorari here.

(a). The appeal now pending in the Court of Appeals presents numerous other issues, both on the merits of the Secretary's wage determination and on the standing to sue of the petitioners (see the notice of appeal and statement of points, App. *infra,* pp. 7-11). The petition states that "Petitioners consider that the other issues presented below are not appropriate for review on this petition" (Pet. p. 2, n. 1). We fully agree, but submit that the piecemeal review now sought of only one of many issues presented by the appeal is similarly inappropriate, and would serve only to prolong this litigation unduly and to burden and complicate the proceedings both in this Court and the Court of Appeals.

(b). Of the 28 petitioners, 19 have been held by the District Court to have no standing to sue and a judgment dismissing their cases was entered. Thus, pending decision of these jurisdictional issues by the Court of Appeals, at least 19 of the petitioners would appear to have no standing to seek review by this Court of any issues on the merits. Moreover, a cross-appeal filed by respondent Secretary of Labor questions the standing to sue of all except three of the remaining petitioners (App. *infra,* pp. 13-14, 17) and a cross-appeal filed by respondent-intervenor Textile Workers Union of America questions the standing of *all* of the petitioners (App. *infra,* p. 12).

(c). Although the petition relates only to a single issue, the entire original record in this case, including the full record of the administrative hearing, has been transmitted to this Court on petitioners' motion, before there was time to cull out the relevant parts. As a result, not only is the record before this Court encumbered with an indiscriminate mass of material irrelevant to the single issue presented by the petition, but the Court of Appeals has been denuded of a record on which disposition of the numerous remaining issues depends. The petitioners' premature application for review of one issue thus has completely suspended proceedings in the Court of Appeals pending return of the record. As pointed out in our Brief in Opposition to certiorari in the *Covington* case, prompt termination of litigation of this type, which seriously interferes with the Government's wage determination program and purchasing functions, is of vital importance. Since there was an adequate and properly prepared record in the *Covington* case to serve as a basis for determining whether certiorari should be granted or denied on the issue petitioners here present, and since the Court has denied review on that record, there appears no occasion for prolonging the litigation in the instant case by piecemeal review, or for burdening this Court with the massive in-

discriminate record or with the confusion of jurisdictional issues involved in the instant case.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

WARREN E. BURGER,
Assistant Attorney General.

PAUL A. SWEENEY,
EDWARD H. HICKEY,
Attorneys.

STUART ROTHMAN,
Solicitor,

BESSIE MARGOLIN,
Assistant Solicitor,
Department of Labor.

March, 1956

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Filed Feb. 10, 1956

Harry M. Hull, *Clerk*

Civil Action No. 1630-54

THE ALLENDALE COMPANY, *et al., Plaintiffs,*

v.

JAMES P. MITCHELL, *Secretary of Labor, Defendant.*

Notice of Appeal

Notice is hereby given this 10th day of February, 1956, that the following named plaintiffs

Abbot Worsted Co.
The Allendale Co.
Ames Textile Corp.
Avery Process Corp.
Bachmann Uxbridge Worsted Corp.
Branch River Wool Combing Co., Inc.
Burlington Mills Corp.
Cascade Woolen Mill
Chatham Manufacturing Co.
Continental Mills, Inc.
Crescent Woolen Mills, Co.
Edenfield Mills, Inc.
Hampton Looms of Virginia, Inc.
The Kent Manufacturing Co.
The Leaksville Woolen Mills, Inc.
Maine Spinning Co.
Marriner & Co., Inc.

Methuen International Mills
The Orr Felt & Blanket Co.
Pacific Mills
Philadelphia Felt Co.
Rochambeau Worsted Co.
Sidney Blumenthal & Co., Inc.
Southwell Combing Co.
Springfield Woolen Mills Co.
J. P. Stevens & Co., Inc.
Whittier Mills Co.
Wyandotte Worsted Co.

hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the judgment of this Court entered on the 10th day of February, 1956 in favor of defendant James P. Mitchell, Secretary of Labor, and intervenors Textile Workers Union of America, CIO and Hayward-Schuster Woolen Mills, Inc., against said plaintiffs.

DEWEY, BALLANTINE, BUSHBY,
PALMER & WOOD

By /s/ STUART N. SCOTT
Stuart N. Scott
31 Nassau Street
New York 5, N. Y.

PURCELL & NELSON
By /s/ C. ROGER NELSON
C. Roger Nelson
910-17th St., N. W.
Washington 6, D. C.
Attorneys for Plaintiffs

Dated: February 10, 1956

Please mail copies to:

Edward H. Hickey, Esq.
Attorney for Defendant,
Department of Justice
Wash. 25, D. C.

David E. Feller, Esq.
Attorney for Intervenor,
Textile Workers Union of America, CIO
1001 Conn. Ave., N. W.,
Washington 6, D. C.

John K. Pickens, Esq.
Attorney for Intervenor,
Hayward-Schuster Woolen Mills, Inc.
Washington Building,
15th & G Sts. N. W.
Wash., D. C.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1630-54

THE ALLENDALE COMPANY, *et al., Plaintiffs,*

— against —

JAMES P. MITCHELL, *Secretary of Labor, Defendant.*

Statement of Points on Which Appellants Intend to Rely

Plaintiffs state that the points on which they intend to rely in their appeal from the Order of the Court granting defendant's and intervenors'

motions for summary judgment and, as to certain plaintiffs, defendant's motion to dismiss are as follows:

The Court erred in not holding that:

(1) Defendant exceeded his authority under Section 1(b) of the Walsh-Healey Act, as amended, 41 U.S.C., Section 35-45 (herein "the Act"), in establishing a nationwide minimum wage for the "Broad-Woven Goods Yarn and Thread Branch of the Woolen and Worsted Industry";

(2) Defendant did not comply with the requirement of Section 1(b) of the Act that the minimum wage must be "prevailing";

(3) Defendant improperly applied the so-called "similar work" standard contained in Section 1(b) of the Act;

(4) Defendant, by relying on a 1952 wage survey, did not comply with the requirement of Section 1(b) of the Act that the minimum wage be determined in the industry "currently" operating in the locality;

(5) The Act does not permit defendant to establish a minimum wage for less than an entire industry, and there is no substantial evidence to support the existence of the Branch of the Industry for which defendant made the determination herein in question.

(6) The notices of hearing in the administrative proceedings herein did not comply with the requirements of law;

(7) There is no substantial evidence to support defendant's wage determination herein;

(8) All plaintiffs have standing, under the Fulbright Amendment to the Act, to seek judicial review of defendant's wage determination.

(9) Those plaintiffs who pay some of their employees less than the $1.20 per hour fixed in defendant's determination and who have performed Government work since May 14, 1949, the date of the prior determination of the Secretary of Labor, have such standing.

Dated: February 10, 1956

DEWEY, BALLANTINE, BUSHBY,
PALMER & WOOD

By /s/ STUART N. SCOTT
Stuart N. Scott
31 Nassau Street
New York 5, N. Y.

PURCELL & NELSON
By /s/ C. ROGER NELSON
C. Roger Nelson
910-17th St., N. W.
Washington 6, D. C.
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1630-54

THE ALLENDALE COMPANY, *et al., Plaintiffs,*
v.
JAMES P. MITCHELL, *Secretary of Labor, Defendant,*
and
TEXTILE WORKERS UNION OF AMERICA, CIO
HAYWARD-SCHUSTER WOOLEN MILLS, INC.,
Intervenors.

Notice of Appeal

Notice is hereby given this 20th day of February, 1956, that the intervenor, Textile Workers Union of America, CIO, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from paragraph 5 of the Order entered herein on the 10th day of February 1956, providing as follows:

> "5. That the motion of intervenor Textile Workers Union of America-CIO to dismiss on a claim of unconstitutionality of the Fulbright Amendment be and it hereby is denied."

ARTHUR J. GOLDBERG
DAVID E. FELLER
1001 Connecticut Avenue, NW
Washington 6, D. C.
BENJAMIN WYLE
99 University Place
New York City,
By /s/ DAVID E. FELLER
Attorneys for Textile Workers Union of America, CIO, Intervenors

Dated: February 20, 1956

Please mail copies to:

Edward H. Hickey
Attorney for Defendant
Dept. of Justice,
Washington 25, D. C.

C. Roger Nelson
Attorney for Plaintiff
910-17th Street, N. W.,
Washington 6, D. C.

John K. Pickens,
Attorney for Intervenor,
Hayward-Schuster Woolen Mills, Inc.
15th & G Streets, N. W.
Washington, D. C.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed March 19, 1956]

Civil Action No. 1630-54

THE ALLENDALE COMPANY, *et al., Plaintiffs,*

v.

JAMES P. MITCHELL, *Secretary of Labor, Defendant.*

Notice of Appeal

Notice is hereby given this 19th day of March, 1956 that James P. Mitchell, Secretary of Labor, defendant hereby appeals to the United States Court of Appeals for the District of Columbia

Circuit from paragraph 3 of the order entered herein on February 10, 1956 denying defendant's motion to dismiss the complaint as to Edenfield Mills, Inc., Bachmann Uxbridge Worsted Corp., Sidney Blumenthal & Co., Inc., Continental Mills, Inc., J. P. Stevens & Co., Inc., and Whittier Mills Company.

Dated: March 19, 1956

Sgd. PAUL A. SWEENEY
Sgd. EDWARD H. HICKEY
Sgd. ARTHUR H. FRIBOURG
Attorneys, Department of Justice

Please mail copies to:

C. Roger Nelson, Esq.
910-17th Street, N. W.,
Washington, D. C.
Attorney for Plaintiffs

David E. Feller, Esq.
1001 Conn. Ave., N. W.
Washington 6, D. C.
Attorney for Textile Workers Union of America

John K. Pickens, Esq.
Washington Building
Washington, D. C.
Attorney for Hayward-Schuster Woolen Mills, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed March 19, 1956]

Civil Action No. 1630-54

THE ALLENDALE COMPANY, *et al., Plaintiffs,*

v.

JAMES P. MITCHELL, *Secretary of Labor, Defendant.*

To: Hon. Harry M. Hull, Clerk of the United States District Court for the District of Columbia

Attention: Appeals and Copies Division

Designation of the Record

Pursuant to the provisions of Rule 75(a) of the Federal Rules of Civil Procedure James P. Mitchell, Secretary of Labor, cross-appellant designates the following additional portions of the records, proceedings and evidence to be contained in the record on appeal in this action:

1. Defendant's motion for limited rehearing filed February 20, 1956.

2. Order denying said motion entered February 27, 1956.

3. Notice of appeal dated March 19, 1956.

4. Statement of points on which cross-appellant intends to rely dated March 19, 1956.

5. This designation.

Respectfully submitted,

Sgd. PAUL A. SWEENEY
Sgd. EDWARD H. HICKEY
Sgd. ARTHUR H. FRIBOURG
Attorneys, Department of Justice

Of Counsel:

STUART ROTHMAN
Solicitor

BESSIE MARGOLIN
Assistant Solicitor

WILLIAM A. LOWE
Attorney, Department of Labor

Dated: March 19, 1956

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed March 19, 1956]

Civil Action No. 1630-54

THE ALLENDALE COMPANY, *et al., Plaintiffs,*

v.

JAMES P. MITCHELL, *Secretary of Labor, Defendant.*

Statement of Points on Which Cross-Appellant Intends to Rely

Defendant James P. Mitchell, Secretary of Labor, states that the points on which he intends

to rely in his cross-appeal from the order of the Court entered February 10, 1956 are as follows:

The Court erred in denying defendant's motion to dismiss as to plaintiffs Edenfield Mills, Inc., and Sidney Blumenthal & Co., Inc., in that these plaintiffs did not seek judicial review within 90 days after the making of the wage determination complained of in the complaint and therefore lack standing to sue. The Court also erred in denying defendant's motion to dismiss as to plaintiffs Bachmann Uxbridge Worsted Corp., Continental Mills, Inc., J. P. Stevens & Co., Inc., Sidney Blumenthal & Co., Inc., and Whittier Mills Company, in that these plaintiffs were not adversely affected or aggrieved by said determination within the meaning of the Walsh-Healey Public Contracts Act, 41 U.S.C. 35-45, and therefore lack standing to sue.

Dated: March 19, 1956

Sgd. PAUL A. SWEENEY
Sgd. EDWARD H. HICKEY
Sgd. ARTHUR H. FRIBOURG
Attorneys, Department of Justice

Of Counsel:

STUART ROTHMAN
Solicitor

BESSIE MARGOLIN
Assistant Solicitor

WILLIAM A. LOWE
Attorney, Department of Labor

☆U. S. GOVERNMENT PRINTING OFFICE 1956—379805/P.O. 1192

36

No. 755

Office - Supreme Court
MAR 30
HAROLD B. WILLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

THE ALLENDALE CO., et al.,

Petitioners,

v.

JAMES P. MITCHELL, SECRETARY OF LABOR, et al.,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENT TEXTILE WORKERS UNION OF AMERICA IN OPPOSITION

ARTHUR J. GOLDBERG
DAVID E. FELLER
1001 Connecticut Avenue, NW.
Washington 6, D. C.

BENJAMIN WYLE
99 University Place
New York 3, N. Y.

Attorneys for
Textile Workers Union of America

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 755

THE ALLENDALE CO., et al.,

Petitioners,

v.

JAMES P. MITCHELL, SECRETARY OF LABOR, et al.,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENT TEXTILE WORKERS UNION OF AMERICA IN OPPOSITION

This petition for certiorari seeks review, before decision in the Court of Appeals, on the same issue which was presented for review in *Covington Mills et al.* v. *Mitchell et al.*, October Term, 1955, No. 682, *certiorari denied* March 26, 1956. All of the reasons arguing against a grant of certiorari in that case apply equally to this case. There are,

furthermore, additional reasons why certiorari should not be granted in this case.

First of these additional reasons, of course, is the fact that the petition asks direct review of the decision of the District Court, without argument or decision in the Court of Appeals. The petitioners sought this extraordinary relief because of the pendency in this Court of the *Covington Mills* case. The denial of certiorari in *Covington Mills* destroys the basis for such review and the case should be permitted to proceed in the normal manner in the Court of Appeals.

Procedure in the normal manner is not merely a formality. There are a number of substantial issues which should be resolved in the Court of Appeals before this Court should even consider a petition for certiorari.

Most important of these other issues is whether the petitioners here are proper parties to seek review of that substantive question, and, indeed, whether the District Court had any jurisdiction in the premises.

As to the question of parties, 28 companies here seek review on the merits of a District Court judgment to which 19 of them (including the Allendale Co.) are not even parties. These 19 were dismissed as plaintiffs by the District Court because they do not come within the terms of the Fulbright Amendment, on which jurisdiction rests. (Petition, p. 19). We do not deny the right of these 19 to seek review of the order dismissing them from the action. Indeed, they have done so in their appeal to the Court of Appeals in this case. But they seek review in this Court of the judgment on the merits before that appeal has been heard in the Court of Appeals. And they did not even ask this Court to review the District Court's action in dismissing them from the case.

It seems to us that it would be most inappropriate for this Court to grant the petition of these 19 plaintiffs for review on the merits and to leave for later disposition in the Court

of Appeals the question of whether they have standing to seek such review.

The District Court did permit 9 of the 28 present petitioners to remain in the case (Petition, p. 19) and it did deny the motion to dismiss the entire complaint which had been filed by the Textile Workers Union (Petition, p. 20). Unlike the other 19, therefore, these 9 are still parties to the case.

But appeals are pending in the Court of Appeals as to their status. The Secretary of Labor has noted an appeal from the refusal of the District Court to dismiss 6 of these plaintiffs on the ground that they do not come within the terms of the statute creating jurisdiction. The Textile Workers Union of America has filed an appeal in the Court of Appeals from the refusal of the District Court to hold that it had jurisdiction over none of the plaintiffs because the statute creating jurisdiction, the Fulbright Amendment, is unconstitutional. None of these appeals has yet been heard in the Court of Appeals.

In addition to these jurisdictional questions, there are other challenges to the validity of the Secretary's order which were pressed by the petitioners in the District Court and rejected by it, and which petitioners have stated they intend to press in their appeal in the Court of Appeals. These other challenges are unrelated to the "locality" question on which direct review is sought here.

We think it plain that this Court should not grant the extraordinary relief of certiorari before judgment on the bare legal question of the correctness of the District Court's ruling on the "locality" question before the Court of Appeals has had an opportunity to pass upon all of the questions which are also presented in the three appeals now pending in the Court of Appeals. We also think that, even in the absence of these considerations, the Court should deny certiorari because the decision below is plainly correct and no further review is appropriate. Our arguments in

support of that view are set forth fully in our brief in opposition in the *Covington Mills* case.

Respectfully submitted,

ARTHUR J. GOLDBERG
DAVID E. FELLER
1001 Connecticut Avenue, NW.
Washington 6, D. C.

BENJAMIN WYLE
99 University Place
New York 3, N. Y.

Attorneys for
Textile Workers Union of America

APR 5 1
HAROLD B. WILLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 755

THE ALLENDALE CO., *et al.*,
Petitioners,

vs.

JAMES P. MITCHELL, SECRETARY OF LABOR, *et al.*,
Respondents.

PETITIONERS' REPLY TO MEMORANDA IN OPPOSITION

STUART N. SCOTT,
WILLIAM J. KRIDEL,
ALBERT J. COAKLEY,
40 Wall Street,
New York 5, New York.

C. ROGER NELSON,
FRANKLIN M. SCHULTZ,
910 Seventeenth St., N.W.,
Washington 6, D. C.

Attorneys for the Petitioners.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 755

THE ALLENDALE CO., *et al.*,
Petitioners,

vs.

JAMES P. MITCHELL, SECRETARY OF LABOR, *et al.*,
Respondents.

PETITIONERS' REPLY TO MEMORANDA IN OPPOSITION

Respondents have chosen not to answer directly the present petition for certiorari. Instead they refer the Court to their briefs in opposition in *Covington Mills, Alabama Mills, Inc., et al.* v. *James P. Mitchell, Secretary of Labor*, No. 682, certiorari denied March 26, 1956. They would have the Court treat its denial of certiorari in *Covington Mills* as requiring denial of this petition. But there are substantial reasons for granting certiorari in this case notwithstanding the denial in *Covington Mills*, which reasons have not been contravened by respondents.

1. In *Covington Mills* the Secretary of Labor established a prevailing minimum wage under the Walsh-Healey

Public Contracts Act of $1.00 per hour for the cotton textile industry. On March 1, 1956, before the petition for certiorari in that case reached this Court for disposition, $1.00 per hour became the minimum wage for all workers engaged in interstate commerce or in the production of goods for commerce, by virtue of a 1955 amendment (69 Stat. 711, 29 U.S.C. § 206) to the Fair Labor Standards Act. The Court may well have considered that, since the Secretary's determination in *Covington Mills* would have no significant future effect, the case was not sufficiently important to warrant review.

No such consideration is present in this case. The Secretary's single nationwide determination of $1.20 per hour for the woolen and worsted industry is higher than, and unaffected by, the new FLSA minimum. Members of the industry will be compelled to observe the new determination to qualify for government work. Thus the "locality" issue is a vital and pressing one in this industry and in others for which the Secretary makes nationwide determinations which exceed the FLSA minimum.*

2. In this case, unlike *Covington Mills,* the Secretary has made admissions which demonstrate that the "locality" issue should be reviewed by this Court. In his proposed determination of January 30, 1954 (19 Fed. Reg. 535) which was later adopted to be effective May 7, 1954 (19 Fed. Reg. 1930), the Secretary, after announcing that he was making a single determination "co-extensive with the entire area in which the Industry operates," observed:

> "This construction of the provisions of the Act has not been wholly free from doubt, however, and the

---

* The Secretary has just issued, over industry objection, a proposed determination for the electric lamp industry on a nationwide basis and above the FLSA minimum (April 3, 1956 Department of Labor Release).

> pertinent statutory provision has been variously interpreted by parties interested in these prevailing minimum wage determinations. Congress inquired into the problem in 1952, and made provision for its solution. After considering the interpretation applied by the Department over the last 16 years and specific language proposed to require a change, Congress disposed of this question by granting to the parties adversely affected by the Secretary's determinations the right to take the question to court for ultimate judicial resolution. This right to judicial review did not exist before. Congress did not deem it advisable to exercise its power either to reverse or affirm the past practices of the Department. It left the matter to resolution of the courts through the usual processes available to aggrieved parties."

In his opposition to the petition in *Covington Mills,* the Secretary contended that the Court of Appeals was "clearly correct" in approving a nationwide determination, and that Congress had acquiesced in his disregard of the locality standard. Yet in the above passage he has conceded that his construction of the Act has not been "wholly free from doubt", that Congress did not either "reverse or affirm" past practices of the Department, and that Congress looked to "ultimate judicial resolution" of the locality question. In *Perkins* v. *Lukens Steel Co.,* 310 U.S. 113 (1940), this Court, after granting certiorari, concluded that industry members did not have standing to challenge a Walsh-Healey Act determination. The clear purpose of the Fulbright Amendment was to remove the barrier to standing found by this Court so that the locality issue could be considered on the merits (98 Cong. Rec. 6641 (1952)). Surely, Congress, as well as members of this and other industries contracting with the Government, expected with reason that the "ultimate judicial resolution" of the locality controversy would be had in this Court and not in an intermediate court. Thus the important question of

federal law presented by this petition calls for decision by this Court now.

3. Respondents urge denial of certiorari because petitioners' appeal now pending in the Court of Appeals presents other issues not included in the petition. Petitioners do not consider such issues appropriate for review on a petition for certiorari before judgment. But they do consider that, because of the great importance of the locality issue and because resort to the Court of Appeals on that issue would plainly be futile, review of such issue now by this Court is appropriate and necessary. Petitioners believe that their other grounds of challenge to the determination are valid and substantial. Nevertheless, in view of the overwhelming importance to this industry and other industries of obtaining a decision by this Court on the locality issue, petitioners now undertake, upon a grant of certiorari, to withdraw all their other grounds of appeal in the Court of Appeals. This undertaking leaves without semblance of substance the Secretary's objections to "piecemeal review".

4. Respondents refer also to their cross appeals relating to issues of standing. But the Secretary has conceded the standing of three petitioners.* Thus, even if the Secretary were to prevail on his appeal, these three would still have standing to continue the challenge to the determination. Postponement of a decision on the merits of this petition for action on the Secretary's appeal would indeed "serve only to prolong this litigation unduly". This Court's disposition of the petition is not dependent upon the number of petitioners. A decision by this Court on the locality issue will, in any event, be controlling on the Secretary and all members of the Industry.

---

* Burlington Mills Corp., Chatham Manufacturing Co., and The Leaksville Woolen Mills, Inc.

5. The Union makes the unusual contention that the District Court erred in not ruling on standing in such a way as to render the Fulbright Amendment unconstitutional. The District Court construed the Fulbright Amendment to grant standing only to petitioners showing actual aggrievement by the determination (Petition, Appendix A, p. 16). The Union's opposition to certiorari on the ground that the District Court should have read the Amendment in a manner which the Union says would make it unconstitutional should be disregarded as frivolous.

6. Finally, the Secretary opposes certiorari because more of the record has been lodged with this Court than need be considered in passing on the issue presented by the petition. The point is plainly without merit. The certified transcript of the record below was filed in accordance with this Court's Rule 21. The Secretary does not contend that the petition fails to set forth, by summary and appendix, enough of the proceedings below to serve the Court's needs in passing on the petition. Should the writ be granted, petitioners will, of course, in accordance with Rule 26, designate for printing those parts of the record deemed necessary to a consideration of the case on the merits.

Respectfully submitted,

STUART N. SCOTT,
WILLIAM J. KRIDEL,
ALBERT J. COAKLEY,
40 Wall Street,
New York 5, New York.

C. ROGER NELSON,
FRANKLIN M. SCHULTZ,
910 Seventeenth St., N.W.,
Washington 6, D. C.
Attorneys for the Petitioners.

April, 1956.